

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **April 13, 2004**

AGENDA ITEM NO.: 8

CONSENT:

REGULAR: **X**

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: **Public Hearing Regarding Vacation of a Public Access Easement**

RECOMMENDATION:

Parks and Recreation staff recommend that City Council do not vacate the 15 foot public access easement located between lots 6 & 7, New Towne, Section 2 (116 & 117 Averill Court).

SUMMARY:

Tammy Marsh and Bernadine C. Gaines have requested that a 15 foot public access easement dedicated to the City of Lynchburg for a future public biking/walking trail located between lots 6 & 7, New Towne, Section 2 (116 & 117 Averill Court) be vacated. They contend that the easement presents a significant depreciation in the value of their properties, an intrusion of their privacy, along with other negative factors. The Parks and Recreation Department is not recommending the vacation of the public access easement in that it provides one of the few accesses to the "trail" along the creek if developed. The Technical Review Committee comments are attached.

PRIOR ACTION(S):

March 23, 2004: Technical Review Committee Review
April 6, 2004: Physical Development Committee Review

BUDGET IMPACT:

None

CONTACT(S):

Pat Kost	455-3990
Tammy Marsh	258-8869

ATTACHMENT(S):

- Ordinance
- Map
- Technical Review Committee Report
- Application

REVIEWED BY: lkp

AN ORDINANCE VACATING A 15 FOOT PUBLIC ACCESS EASEMENT LOCATED BETWEEN 116 AND 117
AVERILL COURT

WHEREAS, Tammy Marsh and Bernadine C. Gaines have requested that the City of Lynchburg, on its own motion, vacate a 15 foot public access easement dedicated to the City for a future public biking/walking trail; and

WHEREAS, the petitioners own all of the adjoining property; and

WHEREAS, City Council finds that no public inconvenience will result from vacating this public access easement;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Section 35-71 through Section 36-77 of the City Code, 1981, as amended, the following described 15 foot public access easement be, and the same hereby is, discontinued and vacated, namely:

A 15 foot public access easement dedicated to the City of Lynchburg for a future public biking/walking trail located between lots 6 & 7, New Towne, Section 2 (116 & 117 Averill Court).

Provided, however, that an easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg, and the construction of any building or structure or the use of the vacated property in any manner that could interfere with the City's right to locate, relocate, repair, replace and maintain and perpetually operate utilities is prohibited without the prior written approval of the City Manager's Office, City Utilities Division and the City Engineering Division.

BE IT FURTHER ORDAINED That the Clerk of Council is hereby authorized and directed to deliver a duly-certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg.

Adopted:

Certified:

Clerk of Council



THE CITY OF LYNCHBURG, VIRGINIA

Planning Division

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March 29, 2004

TO: Patricia W. Kost, Clerk of Council

FROM: Annette M. Chenault, Planner II *amc/ajw.s*

RE: Access Easement Vacation - (SUB0403-0001)
#116, 117 Averill Court
TM# 235-10-006/007

On March 23, 2004 the Technical Review Committee (TRC) reviewed the subject easement vacation. Following are the comments:

1. The subject project proposes the vacation of an easement located between 116 and 117 Averill Court. An application for the vacation of the easement has been submitted to the City Manager's Office. Contact Patricia Kost, Clerk of Council, at 455-3982 for further information and the public meeting date.
2. The plat entitled "Plat Showing Section 4, Lots 1-30, New Towne," by Acres of Virginia, Inc., dated Revised November 3, 2003, shows 15' Sanitary Sewer Easements & Public Biking & Walking Trails Dedicated to the City of Lynchburg extending from the future street extension of Towne Crier Road to the Blackwater Natural Area. These easements may serve as alternatives to the access proposed to be vacated. The New Town, Section 4 plat must be finalized and recorded in order to dedicate these easements/trails.
3. The Parks & Recreation Department strives to meet the recreation needs of all citizens through a comprehensive system of interconnected neighborhood-based recreation sites. Trail easements in the New Town Development were obtained for future trail access and trail construction, and are an important part of the City's overall trails plan. In addition, these same greenway corridors provide access to utility infrastructure, including the City's CSO grid.

We do agree that the properties at 116 and 117 Averill Court are impacted negatively by the existing recreation easement. However, since the trailhead (once constructed) will only provide neighborhood access, the access does not present a significant traffic hardship to the residents. Rather, these two particular properties are subject to a significant loss of privacy, should trails every be constructed through the present access location. It must be stated that this incursion is not the result of any misstep by the City, but appears to be a direct result of poor planning on the part of the general contractor and the attorney conducting the title searches for the two effected landowners.

It is the recommendation of the Department of Parks & Recreation that we wait until the new residential expansion (Wessex Rd., Lawton Lane, Judd Court, etc.) by Long Meadows, Incorporated has progressed enough to identify the proposed recreation/utility easements prior to vacating the current easements at 116 and 117 Averill Court. At that time, Greg Poff, Mike Gambone and I can review the corridor and make a final recommendation. I anticipate that the recommendation will be favorable and that the easement at 116 and 117 Averill Court will be vacated, but to do so now seems premature since none of the lines are marked, and clearing and grubbing has yet to be completed.

Finally, it is important to monitor site development in this next phase of construction. It does the City no good to obtain a recreation easement if the easement is blocked in entirety by utility pedestals and landscaping, as is the case with the Averill Court Easement. Even if the City wanted to construct a trail through Ms. Marsh's property, it would require thousands of dollars to move the existing utilities, thus making trail construction a remote possibility at best. We are not sure how to address this problem concerning the blockage of trail and utility easements other than that the construction project be followed more closely by the City and/or that certain requirements to maintain an open corridor be placed upon the development plans prior to their approval.

4. Vacation of the easement is not recommended since it provides one of the few accesses to the "trail" along the creek if developed. It also gives us clear easement to sewer lines if needed.

Attachment

pc: Technical Review Committee
Tammy Marsh







